

Def

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OPENING STATEMENT

MR. PRESIDENT AND MEMBERS OF THE TRIBUNAL.

In presenting the case of the accused, DOHIHARA, Kenji, we have interrogated many witnesses and examined literally hundreds of documents, but in the interest of time we have discarded all of our contemplated evidence, both oral and written, except that which we feel is absolutely necessary. In accordance with the policy which we have thus established, we shall attempt to place our individual defense before the Tribunal as expeditiously as possible.

There has been produced, for the benefit of the Tribunal, a great deal of information apparently directed against the accused DOHIHARA. The prosecution has characterized this information as competent evidence, but a careful analysis will reveal that it is, in the main, either rank hearsay or an attempt to prove facts by innuendo, and in the opinion of counsel need not be answered. Consequently, we have limited ourselves to rebuttal evidence and such other explanatory evidence as we feel will be of most benefit to the Tribunal.

Evidence concerning the so-called Mukden Army Special Service Organ, which was headed by General DOHIHARA, was introduced in such a manner as to leave the impression that this organization was a far flung network; at all times engaged in nefarious and

underhanded practices. In order to meet this highly conjectural evidence, we will offer the affidavit of one AIZAWA, Makamoto, who will testify that he was employed as a civilian in this organization from December, 1930, until March, 1936, and that the accused DOHIHARA was his immediate superior. His testimony will disclose that in truth and in fact the Mukden Special Service Organ had only four clerks, of which he was one. He will outline in general the operations of that organ, and will describe its actual functions.

The prosecution has introduced evidence intending to show that General DOHIHARA was not only opposed to the Chinese people as such, but that he actively instigated incidents for the purpose of bringing about a clash of arms between the Chinese and Japanese nations. In support of this theory the prosecution produced one General Ching Teh-Chun, who testified, in substance, that he had held a conversation with a certain Shibayama in Chung-Shan Park in Peking; that this Shibayama told him: "Dohihara is about to go to Manchuria to embark on some big project." This conversation is alleged to have taken place just prior to the Mukden Incident. We shall produce and offer to the Tribunal, by affidavit, the testimony of a witness by the name of Shibayama. He will testify, among other things, that after Gen. Ching testified, he called the witness Shibayama and informed him that he had used his name before the Tribunal. Furthermore he informed him in what connection his name had been used. This witness, if permitted to testify,

will deny that he ever had any such conversation with Gen. Ching at any time; that as a matter of fact, prior to 9 September 1931 he was in Tokyo in connection with the murder of one Captain Nakamura, Shintaro and that while there Gen. DOHIHARA was also in Tokyo making his report on the same case, and that it would have been quite impossible for him to have had any conversation with Gen. Ching at the time Gen. Ching testified the conversation took place.

In a further attempt to tie Gen. DOHIHARA into other activities in Manchuria, evidence was introduced in the form of several telegrams which originated with one Kuwajima, Kazue, who was the then Consul General at Tientsin. On first examination, these telegrams apparently recite facts. The prosecution, however, did not offer the testimony of Kuwajima, Kazue, who prepared and caused to be transmitted the telegrams in question, but we will offer him as a witness. We will offer his testimony in order to show the true character of the evidence contained in the telegrams in question. If permitted to testify, Kuwajima will state, among other things, that the contents of the telegrams were based upon information gleaned from such sources as newspaper articles, rumor; in short, any information from whatever channels available. He will further state that the telegrams contained nothing but conclusions which he had drawn without having any personal knowledge of the alleged facts. This testimony will be offered to show to the Tribunal that if the evidence in ques-

tion had been offered by the prosecution in any other form, it could have been, and no doubt would have been rejected, on any of several grounds. In order to substantiate the testimony of the witness Kuwajima we will make brief reference to prosecution's exhibit 245, which is the affidavit of one Morishima, Moroto, a prosecution witness who was an Assistant Consul General. He states, concerning the transmission of such information as was contained in the telegrams introduced by the prosecution, that it was the duty of the Consulate officials to draw conclusions and to transmit them to the Foreign Office.

There is a great deal of evidence concerning alleged atrocities committed against the Chinese by Japanese forces, and while there is none directly attributed to the forces of the accused DOHIHARA, the inference is strong and it appears, by innuendo only, that the accused DOHIHARA was responsible for some of the acts. We will offer the testimony of several witnesses who were officers with Gen. DOHIHARA in the field, and we will offer the personal testimony of at least one newspaper correspondent who was in the field with him and who had an opportunity to observe his actions; listen to his counsel, and to inspect and become familiar with his orders concerning the treatment of the Chinese people. This testimony will show that Gen. DOHIHARA not only did not believe in armed hostilities between the Japanese and Chinese, but that he actually deplored the fact that such hostilities were being carried on; that he often cautioned and, when necessity arose,

reprimanded his subordinates with reference to the ill treatment of the Chinese people. We will offer a document which was written by the accused DOHIHARA and published in March, 1937, which will bear out the testimony of the witnesses as to his attitude and thoughts. This document will show that not only did he act in accordance with well defined principles, but that he also wrote about them and used whatever medium was at his disposal to inform the Japanese people of his thoughts. Our testimony will show that the Chinese people in the occupied territory under the command of the accused DOHIHARA came to trust him and continued in their occupations peacefully and without interference from Japanese troops. Evidence of this type will be introduced to show that he acquired and maintained a reputation among the masses of Chinese civilians for fair play and honest dealing. In this connection we shall make reference to certain passages in the Lytton Report and will offer in evidence a verbatim conversation between Lord Lytton and the accused DOHIHARA, by which we will prove that Lord Lytton not only knew of his reputation but also commended him for his ability to be able to reorganize in a phenomenal period of time the disrupted city of Mukden.

The prosecution introduced evidence to show that at one time the accused DOHIHARA was Commander of the Seventh Area Army which had jurisdiction over Malaya, Sumatra, Java and British Borneo. The reason for the prosecution's evidence undoubtedly was for the purpose of attempting to show that the accused DOHIHARA

was responsible for all atrocities, if any, which may have occurred in those areas during his command of the Seventh Area Army. We will offer evidence to prove that the Seventh Area Army was a subordinate command of the Southern Army, and that the Southern Army retained under its direct supervision the control of the prisoners of war camps, and that the Commander of the Seventh Area Army had nothing whatsoever to do with prisoners of war.

There is evidence to show that at one time Gen. DOHIHARA was the Commanding General of the Eastern Area Army of Japan. This evidence also was undoubtedly introduced to show that Gen. DOHIHARA was responsible for the atrocities, if any, committed in the area under the command of the Eastern Area Army. Our testimony will show that the Eastern Army was in charge of the defense of the Tokyo area and some adjacent territories. We will produce and offer as a witness one Tatsumi, Yeichi, who will testify that he was Gen. DOHIHARA's Chief of Staff. He will also testify about a rather complicated system of command, which was set up for the purpose of the control and treatment of prisoners of war camps and prisoners of war in the area under the jurisdiction of the Eastern Area Army. He will also testify that he knows of his own personal knowledge that Gen. DOHIHARA never received a single complaint concerning the mistreatment of prisoners of war during the time he was the Commanding General of the Eastern Area Army. He will testify briefly concerning the policy of Gen. DOHIHARA with reference to the treatment of

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prisoners of war and Gen. DOHIHARA's activities concerning them.

We will also make brief reference to the testimony of a prosecution witness who testified concerning a visit of Gen. DOHIHARA to one of the prisoner of war camps. This reference will be made in order to show that if there was mistreatment of prisoners, it was contrary to the orders of Gen. DOHIHARA, because before his visit the camp commanders required the camp to be cleaned on several different occasions in anticipation of Gen. DOHIHARA's inspection trips. Our testimony will disclose that Gen. DOHIHARA did not and could not formulate major policies concerning prisoners of war, and that the only policies which he did formulate were with reference to those of command, administration and supply.

This, in brief, covers the content of our expected testimony, and we will now proceed to the introduction of our evidence in the individual phase concerning General DOHIHARA.

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土肥原賢二に歸する

冒頭陳述

太田金次郎  
フランクリン、E、N、ウォーレン

## 冒頭陳述

裁判長並に裁判官各位

被告土肥原賢二關係の辯論を開始するに當りまして我々は幾多の證人を取調べ且つ實際數百の書類を検討致しました。あります。

然るに時間節約の關係上我々が提出したいと考へました人證並に書證の中絶對必要不可缺なるもののみを探擇し已は盡く之を廢棄したのであります。

斯る方針に従ひまして出来得る限り迅速を旨として被告土肥原の個人辯護を法廷に展開せんとするものであります。

被告土肥原に對して向けられたと思しき数多くの情報が検察側によつて提出せられました。

檢察側は此情報をもつて有力なる證據として採擇せられたのであります。がそれを注意深く分析致しますると大体に於て傳聞か然らずんば根様なき疎により事實を立證せんとする企てに過ぎざることが明瞭となるのであります。故に斯る證據に對しては辯護人は一々之に反駁を加ふるの必要を認めないのであります。從つて茲には反證並に裁判所の参考資料となるであらうと思料せらるゝ説明的な證據のみを擧ぐるに止め度いと存ずるのであります。

検察側は土肥原將軍を長として居た所謂奉天陸軍特務機關に關する證據を提出して此機關が常に陰險にして秘密的な仕事に從事して居つた大規模なる組織を有する機關なるかの如き印象を與へんと企てられました。

依つて辯護人は斯る臆測的證據の黑白を明かにする爲證人愛澤誠の供述書を提出し度いと思ひます。

本證人は一九三三年十二月から一九三六年三月迄軍屬として此機關に居はれて居た事、並に被告土肥原は彼の直屬上官であつた事を證言する旨であります。

彼は奉天特務機關には僅かに四人の書記が居た丈で彼は其中の一人であります。

まつた事及機關の仕事の概略並に其實際の職務につき陳述するであります。

検察側は證據を提出して土肥原將軍が單に中國民衆に對して反対ではなく中日兩國民間に武力衝突を起させる目的を以て事件を積極的に便喚したといふ事を示そうと意圖されたるが如く見受けられるのであります。此立論を支持する爲に検察側は奏徳純將軍を喚問せられ同證人は當裁判所に於て大要次の様に證言致しました。

即ち同證人が北京の中山公園に於て崇山なる者(?)を會談其際崇山は山土肥原は或る大きな計画を實行する爲滿洲に行かうとして居る」と語つたといふのであります。

此會談のあつたのは滿洲事變の直前であつたと云はれました。

我々は當裁判所に對して柴山といふ名前の證人を出廷させるであります

せう。

本證人は取りわけ、檢察側證人の奏將軍が其證言を行つた後、柴山證人と會見し裁判所に於て柴山の名前を使つたと語つた事を證言し、更に奏將軍がどういふ關係で柴山の名を使つたかを本證人に告げた事を證言する筈であります。

本證人は彼がいかなる機會にも奏將軍とかような言話をした事は断じて一度たりとも無かつた事を證言し又事實問題として一九三一年九月十九日の前には柴山は中村麌太郎大尉虐殺事件の關係上東京に滞在し且つ彼の滯京當時土肥原將軍も同様に東京に居て同事件に就て報告の爲證言した時日に證人奏徳純將軍と會談する事は全く不可能であつた筈といふ事を證言するであります。

検察側は更に歩を進めて明かに土肥原將軍と滿洲に於ける他の幾つかの活動とを結びつけようといふ考から當時の天津總領事桑島主計氏から發せられたる敷道の電報を提出せられました。此等の電報は一見した所では事實を報告したかの如く見えます。而し檢察側は問題の電報を準備し傳達せしめた桑島主計氏を證人として出廷せしめませんでした。

けれども我々は同氏を證人として出廷させるであります。我々は同證人をして問題の電報に含まれて居る證據の眞相を明確ならしめんとするものであります。桑島證人は特に同電報の内容か新聞記事や博聞であります。桑島證人は手の届く筋から得た情報に基いたものであることを證言するであります。彼は裏に問題の電報は彼自身直接には真相を知らないで下した結論に過ぎないものしか含んでゐなかつた事を陳述するであります。此證據を當裁判所に提出致しますのは若し問題の證據へ即ち桑島電報が別を形式で檢察側によつて提出せられたとすれば裁判所の議決に基いて疑惑なく却下せられて居たに相違ないといふ事を示す爲であります。桑島證人の證言を支持する爲に檢察側證第二四五號を簡単に引用致しますが此書證は檢察側の證人で當時副領事たりし森島守人の供述書であります。彼は供述書の中で問題の電報にあるやうな情報の傳達に關して結論を纏めて陳述し外務省に傳達するのを領事館吏の職務であつたといふ事を陳述し

て居ります。中國人に對する日本軍の殘虐行爲に關する證據が多く提出されましたが其  
中には一つも被告土肥原の指揮下にゐる軍隊が直接やつたといはれてゐるもののはないひであります。被告土肥原がさうした行爲のうちの或ものに對して責任があるかの如く云はれるのは何等の確たる根據をき單なる臆測に過ぎないものであります。之に對し我々は戰地に於て土肥原將軍の部下に  
たりし數名の證人を喚問する豫定であります。又戰地に於て土肥原被告と行動を共にし、土肥原の爲す所を觀察し、其意見を聴き、且つ一般中國人の取扱に關して實地を檢分したり土肥原の命令をよく知つたりする機會を持つて居た或る新聞特派員の直接證言を提出する心算であります。此證言は土肥原將軍か中日間の武裝對立を信奉して居なかつた丈でなく武力によ  
る對立が現に行はれて居る事實を實際非常に遺憾に思つて居た事を明かに  
し、又同將軍が中國民衆の取扱に關して終始部下を戒め、不辛にして其必  
要を生じた時には部下を譴責した事を明かにするであります。我々は證  
據<sup>を</sup>ととして被告土肥原が書いて一九三七年三月に發表した一文書を提出する  
支持するであります。此文書は彼の態度と思想とに關する證人達の證言を充分に  
丈でなく其の主義に就て筆を取り、何か機會を得さへすれば何時も自分の  
思想を日本の民衆に知らせるやうにして居たといふ事を明かにするであります

我々は被告土肥原の指揮下に在つた占領地區間の中華民衆が彼を信用する様になり日本軍隊の干渉を受けないで平和の裡に彼等の生業を続けて居つた事を示す證據を提出するのであります。此種類の證據を提出するのは、土肥原が其公正さと誠實な處置とに上つて一般中國の大衆の間に人望を得且之を持続して居た事を示す爲であります。此點に關して我々はリットル報告書中の或る數節を引用し且つ證據としてリットル卿と土肥原被告との間の一問一答を提出する心算であります。之によつて我々はリットル卿が土肥原被告の人望ある事を知り且つ驚くべき程の短期間に混亂した奉天市を再組織する事が出来た彼の能力を賞讃した事を立證し上うと思ひます。檢察側は曾て被告土肥原がマレイ、スマトラ、ジャバ及び英領ボルネオを管轄する第七方面軍の司令官であつた事を示す證據を提出せられました。檢察側が此證據を提出せられました理由は被告土肥原が第七方面軍を指揮して居た間に其管轄區域内に於て起つたかも知れない一切の殘虐行爲に對して被告に責任ある事を示す目的である事は疑の無い所であります。

我々は第七方面軍が南方總軍の隸下にあつた事南方總軍は俘虜收容所の監督を直轄してゐた事並に第七方面軍司令官は俘虜とは全然關係が無かつた事を證明する證據が提出せられるであります。

土肥原將軍が東部軍司令官であつた事を示す證據が提出されました。此の證據は疑も無く東部軍の管轄地域に於て行はれたかも知れない殘虐行為に對して土肥原大將が責任がある事を示さうとして提出されたものであります。我々の證據は東部軍は東京地區及接續地域の防衛に任じてゐたものでありますことを示すであります。

我々は證人として辰巳榮一を喚問致します。本證人は土肥原大將の下に參謀長を勤めたことがあり東部軍の管轄地域内の俘虜收容所並に俘虜の管理に關する命令組織に就て證言するであります。彼は又土肥原大將が東部軍司令官であつた期間中一度も其の管轄内の俘虜の不當な取扱に關する苦情を受けたことがなかつたことを直接知つてゐることを證言するであります。

彼は俘虜の取扱に關する土肥原將軍の方針並に俘虜に關する土肥原將軍の活動に就て簡単に證言するであります。我々は又土肥原將軍の俘虜收容所訪問に關して證言をした檢察側證人の證言に對し簡単に言及するであります。

之は若し万一俘虜の不當な取扱があつたとしたならばそれは土肥原將軍の命令に反した事であつたことを示す爲であります。

何故ならば彼が同收容所を訪問する前に土肥原將軍の檢閥を豫想して收容所長は何回も收容所の清掃を要求したといふ事實があるのであります。我々の證據は土肥原將軍が俘虜に關する重要な政策は作成もしなかつたし又作成する權能も無かつたといふ事及び彼が作成した唯一の方針といへば命令傳達事務管理及び給與に關するもの丈であつた事を明かにするであります。

以上簡単に我々の之より提出せんとする證據の内容を列舉致しました。さて之より土肥原將軍に關する個人辯護段階の證據提出に移ります。

以上